

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B3
PLR-105547-16

Date:
August 02, 2016

Legend

X =

n =

m =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year =

Dear :

This letter responds to a letter dated February 10, 2016, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

Facts

The information submitted states that X was incorporated under the laws of State on Date 1. On Date 2, X filed an amendment to its Certificate of Incorporation, specifically amending the Fourth Article ("Restated Fourth Article") to authorize n shares of Class A Common Stock, all without nominal or par value, and n shares of Preferred Stock, par value of \$m per share, and immediately converted the class of Class B Common Stock to Preferred Stock. The Restated Fourth Article provided that the Preferred Stock would receive priority distributions over the Class A Common Stock.

X elected be classified as an S corporation, effective Date 3. In Year, X became aware that the Preferred Stock created by the Restated Fourth Article created a second class of stock that caused X's S corporation election to be ineffective. On Date 4, X amended the Restated Fourth Article ("Second Restated Fourth Article") to provide for n shares of Class A Common Stock, without par value, and n shares of Class B Common Stock, without par value, and immediately converted the class of Preferred Stock to Class B Common Stock. Under the Second Restated Fourth Article, the Class A Common Stock and the Class B Common Stock confer identical rights to distribution and liquidation proceeds. The only differences between the classes relate to voting rights and notice of shareholder meetings.

X represents that it was not aware that the provisions of the Restated Fourth Article would render its future S corporation election ineffective. X and its shareholders agree to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation. X represents that during all periods since Date 3, X has made distributions to each shareholder pro rata and has filed all returns consistent with X's status as an S corporation.

X requests a ruling that the ineffectiveness of X's S corporation election due to the existence of the Preferred Stock was inadvertent within the meaning of § 1362(f) and that it will be treated as an S corporation from Date 3 and thereafter.

Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) further provides that the termination shall be effective on and after the date of cessation.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides, in part, that a corporation is generally treated as having only one class of stock if all the outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds. Differences in voting rights among shares of stock of a corporation are disregarded in determining whether a corporation has more than one class of stock.

Section 1.1361-1(l)(2) provides, in part, that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to the distribution and liquidation proceeds (collectively, the governing provisions).

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b), (2) the Secretary determines that the circumstances resulting in the ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness, steps were taken so that the corporation is a small business corporation, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in the ineffectiveness, the corporation will be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was ineffective on Date 3 as a result of X having more than one class of stock. We further conclude that such ineffectiveness was inadvertent within the meaning of § 1362(f).

X has taken corrective action so that it meets the requirements of a small business corporation under § 1361(b). Therefore, we determine that pursuant to the provisions of § 1362(f), X will be treated as an S corporation effective Date 3 and thereafter, provided that X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is otherwise eligible to be an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited for precedent.

Pursuant to a power of attorney on file, we are sending a copy of this letter to X's authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the rulings requested, it is subject to verification on examination.

Sincerely,

Holly Porter
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for §6110 purposes